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9 IN THE UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,  
12  
13 Plaintiff,  
14 v.  
15 JOSHUA WAYNE THOMPSON,  
Defendant.

CASE NO. 2:19-CR-236 MCE  
STIPULATION REGARDING USE OF  
VIDEOCONFERENCING DURING SENTENCING  
HEARING; FINDINGS AND ORDER  
DATE: December 3, 2020  
TIME: 10:00 a.m.  
COURT: Hon. Morrison C. England, Jr.

16  
17 **BACKGROUND**

18 On December 19, 2019, a grand jury indicted defendant Joshua Wayne Thompson on one count  
19 of felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). On September 3, 2020,  
20 pursuant to a plea agreement, Thompson pleaded guilty to that charge. A sentencing hearing in this  
21 matter is scheduled for December 3, 2020.

22 On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act  
23 (“CARES Act”). The CARES Act empowered the Judicial Conference of the United States and Chief  
24 District Judges to authorize plea and sentencing hearings by video or telephonic conference when 1)  
25 such hearings “cannot be conducted in person without seriously jeopardizing public health and safety;”  
26 and 2) “the district judge in a particular case finds for specific reasons that the plea or sentencing in that  
27 case cannot be further delayed without serious harm to the interests of justice.” *Id.*, Pub. L. 116-23  
28 § 15002(b)(2).

1 On March 29, 2020, the Judicial Conference of the United States made the findings required by  
2 the CARES Act, concluding that “emergency conditions due to the national emergency declared by the  
3 President under the National Emergencies Act (50 U.S.C. § 1601, et seq.) with respect to the  
4 Coronavirus Disease 2019 (COVID-19) have materially affected and will materially affect the  
5 functioning of the federal courts generally.”

6 On June 29, 2020, the Chief Judge of this District, per General Order 620, also made the findings  
7 required by the CARES Act: “[F]elony pleas under Rule 11 of the Federal Rules of Criminal Procedure  
8 and felony sentencings under Rule 32 of the Federal Rules of Criminal Procedure cannot be conducted  
9 in person without seriously jeopardizing public health and safety.” Subsequently, the Chief Judge, per  
10 General Order 624, found that, for the reasons set forth in previous general orders, “felony pleas under  
11 Rule 11 of the Federal Rules of Criminal Procedure and felony sentencings under Rule 32 of the Federal  
12 Rules of Criminal Procedure generally still cannot be conducted in person in this district without  
13 seriously jeopardizing public health and safety.”

14 In order to authorize sentencing hearings by remote means, the CARES Act—as implemented by  
15 General Order 624—also requires district courts in individual cases to “find[], “for specific reasons, that  
16 a felony plea or sentencing in that case cannot be further delayed without serious harm to the interests of  
17 justice.” General Order 624 further requires that the defendant consent to remote proceedings.

18 The parties hereby stipulate and agree that each of the requirements of the CARES Act and  
19 General Order 624 have been satisfied in this case. They request that the Court enter an order making  
20 the specific findings required by the CARES Act and General Order 624. Specifically, for the reasons  
21 further set forth below, the parties agree that:

22 1) The sentencing hearing in this case cannot be further delayed without serious harm to the  
23 interest of justice, given the public health restrictions on physical contact and court closures existing in  
24 the Eastern District of California; and

25 2) The defendant waives his physical presence at the hearing and consents to remote hearing  
26 by videoconference and counsel joins in that waiver.

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**STIPULATION**

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant's counsel of record, hereby stipulate as follows:

1. The Governor of the State of California declared a Proclamation of a State of Emergency to exist in California on March 4, 2020.

2. On March 13, 2020, the President of the United States issued a proclamation declaring a National Emergency in response to the COVID-19 pandemic.

3. In their continuing guidance, the Centers for Disease Control and Prevention (CDC) and other public health authorities have suggested the public avoid social gatherings in groups of more than 10 people and practice physical distancing (within about six feet) between individuals to potentially slow the spread of COVID-19. The virus is thought to spread mainly from person-to-person contact, and no vaccine currently exists.

4. These social distancing guidelines—which are essential to combatting the virus—are generally not compatible with holding in-person court hearings.

5. On March 17, 2020, this Court issued General Order 611, noting the President and Governor of California's emergency declarations and CDC guidance, and indicating that public health authorities within the Eastern District had taken measures to limit the size of gatherings and practice social distancing. The Order suspended all jury trials in the Eastern District of California scheduled to commence before May 1, 2020.

6. On March 18, 2020, General Order 612 issued. The Order closed each of the courthouses in the Eastern District of California to the public. It further authorized assigned district court judges to continue criminal matters after May 1, 2020 and excluded time under the Speedy Trial Act. General Order 612 incorporated General Order 611's findings regarding the health dangers posed by the pandemic.

7. On April 16, 2020, the Judicial Council of the Ninth Circuit declared a judicial emergency in this District pursuant to 18 U.S.C. § 3174(d), based on the District's "critically low resources across its heavy caseload." The report accompanying the Judicial Council's declaration analyzed the public safety dangers associated with the COVID-19 pandemic and examined both the

District's caseload (the District currently ranks first in the Ninth Circuit and eighth nationally in weighted filings) and its shortage of judicial resources (the District is currently authorized only six district judges; two of those positions are currently vacant and without nominations). The report further explained that a backlog of cases exists that "can only start to be alleviated" when the CDC lifts its guidance regarding gatherings of individuals.

8. On April 17, 2020, General Order 617 issued, continuing court closures through June 1, 2020 and authorizing further continuances of hearings and exclusions under the Speedy Trial Act.

9. On May 13, 2020, General Order 618 issued, continuing court closures until further notice and authorizing further continuances of hearings and exclusions under the Speedy Trial Act.

10. The judgment and sentencing hearing in this case accordingly cannot be further delayed without serious harm to the interests of justice. The defendant has an interest in resolving the case by proceeding to sentencing. Were this Court to delay the sentencing hearing until a time when the proceeding may be held in person, it would harm the defendant's interest in furthering his case toward resolution. In addition to the defendant, the public has an interest in a timely resolution of this case.

11. Under CARES Act § 15002(b), defendant consents to proceed with this hearing by video-teleconference. Counsel joins in this consent.

IT IS SO STIPULATED.

Dated: December 1, 2020

McGREGOR W. SCOTT  
United States Attorney

/s/ MATTHEW THUESEN  
MATTHEW THUESEN  
Assistant United States Attorney

Dated: December 1, 2020

/s/ HANNAH LABAREE  
HANNAH LABAREE  
Counsel for Defendant  
Joshua Wayne Thompson

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**FINDINGS AND ORDER**

1. The Court adopts the findings above.

2. Further, the Court specifically finds that:


a) The sentencing hearing in this case cannot be further delayed without serious harm to the interest of justice;

b) The defendant has waived his physical presence at the hearing and consents to remote hearing by videoconference.

3. Therefore, based on the findings above, and under the Court's authority under § 15002(b) of the CARES Act and General Order 624, the sentencing hearing in this case will be conducted by videoconference.

IT IS SO ORDERED.

Dated: December 7, 2020

  
MORRISON C. ENGLAND, JR.  
SENIOR UNITED STATES DISTRICT JUDGE